

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF OKLAHOMA

CHARLES D. RIDLEY, )  
Plaintiff, ) Chapter 13 Case No. 11-81817-C  
vs- )  
M & T BANK, ) Adversary Case No. 16-08008  
Defendant. )

**DEFENDANT M&T BANK'S MOTION TO STRIKE STATEMENTS AND EXHIBIT**  
**NOT IN EVIDENCE FROM PLAINTIFF'S PROPOSED FINDINGS OF FACT AND**  
**CONCLUSIONS OF LAW**

Defendant M & T Bank (“M&T Bank”) hereby files its Motion to Strike Statements and Exhibit Not in Evidence from Plaintiff Charles D. Ridley’s (“Ridley”) Proposed Findings of Fact and Conclusions of Law (the “Proposed Findings”), showing the Court as follows:

1. Ridley attached to his Proposed Findings an incomplete and deliberately misleading exhibit to accuse M&T Bank of making “false statements at trial” and inflame the Court into awarding his requested punitive damages of 5 times his purported actual damages or \$322,129.75. (Proposed Findings at 23-24, 25.) Attached as Exhibit A to the Proposed Findings is the first page of a four (4) page Mortgage Statement dated February 16, 2017 (the “Partial Statement”). (*Id.* at Ex. A.) Ridley asserts the Partial Statement shows that “[a]t the same time that the Defendant and its counsel were making a representation before this Court” that “Plaintiff’s loan account had been corrected,” M&T Bank, through the Partial Statement, “continues to assert [Ridley] is delinquent one month, has been charged a late fee of \$31.38, and . . . has been charged numerous fees and charges including Foreclosure Attorney Costs, a Foreclosure Attorney Fee, and a Bankruptcy Attorney Fee.” (*Id.* at 23-24.)

2. Ridley's statements are false. The complete Mortgage Statement dated February 16, 2017 (the "Complete Statement") shows that M&T Bank cancelled fees on Ridley's account as of February 10, 2017. (Affidavit of Jeremy Kirsh ("Kirsh Aff.") ¶ 7 & Ex. 1.) The Transaction Activity reflects the cancellation of fees because each amount shown in the column labeled "Fees" is offset by a corresponding amount in the columns labeled "Total Received" and "Unapplied Funds." (*Id.*) Further, Explanation of Amount Due section of the Complete Statement shows that the purported "fees/charges" were not included in the "Total Amount Due 03/01/17." (*Id.*, ¶¶ 8-9.) M&T Bank's cancellation of fees on Ridley's account is further confirmed by the subsequent Mortgage Statement sent to Ridley dated February 28, 2017 (the "February 28 Statement"). (*Id.*, ¶ 10 & Ex. 2.) The February 28 Statement states the "Total Amount Due 03/01/17" is equal to Ridley's monthly mortgage payment of \$691.33 and there is no mention of the cancelled costs and fees. *Id.*

3. The Partial Statement is deliberately misleading, inflammatory, was not introduced into evidence at trial, and should be stricken. *See, e.g., In re Marion Carefree L.P.*, 171 B.R. 584, 587-88 (Bankr. N.D. Ohio 1994) (striking exhibits attached to post-trial brief that were not introduced at trial).

4. Ridley also inserts in his Proposed Findings additional hearsay and speculation that are not a part of the record and should be stricken. *See, e.g., Sollow v. American Airlines, Inc. (In re Midway Airlines)*, 221 B.R. 411, 463 (Bankr. N.D. Ill. 1998) (striking handwritten calculations on exhibits and references thereto in a post-trial submission where calculations were not offered or admitted into evidence).

5. Ridley speculates in Paragraph 59 of the Proposed Findings, with respect to the foreclosure attorney fees shown on the mortgage statements, that "[t]he facts are that it is just as

likely that the Defendant was preparing to foreclose upon the Plaintiff's home." None of the testimony or exhibits at trial suggest that M&T Bank took any actions to foreclose on Ridley's home. Ridley's conjecture should be stricken. *Id.*

6. In Paragraph 63 of the Proposed Findings, Ridley asks the Court to find that "According to information available on the internet, M&T Bank is a large bank with assets in excess of \$122 billion. M&T Bank has the assets and the resources to devote time and money to fix the Plaintiff's mortgage loan account." Ridley asserts that M&T Bank's assets show that it has the ability to pay the exorbitant amount of punitive damages requested, and that it is a sophisticated creditor. (Proposed Findings at 24.) Ridley did not introduce any evidence or elicit any testimony at the hearing to support Paragraph 63 or the arguments made in support of an award of punitive damages and Paragraph 63 and arguments should be stricken from the Proposed Findings.

7. Ridley also submitted a revised Exhibit 62 to support his request for an award against M&T Bank of \$40,450.00 in attorney's fees and \$644.02 in costs. (*Id.* at 22 & Ex. 62 – March 3, 2017.) The Court previously indicated that it would provide M&T Bank an opportunity to challenge the Ridley's requested attorneys' fees and costs if it determines that Ridley is the prevailing party (Tr. at 4:15-19), and M&T Bank reserves the right to object to Ridley's revised claim for attorneys' fees and costs should the Court determine that he is the prevailing party.

For the foregoing reasons, Defendant M&T Bank respectfully requests the Court strike Exhibit A and Paragraphs 59 and 63 of Plaintiff's Proposed Findings of Fact and Conclusions of Law, and all arguments pertaining thereto.

Respectfully submitted,

KIVELL, RAYMENT, AND FRANCIS, P.C.

s/Brian J. Rayment

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**CERTIFICATE OF SERVICE**

This is to certify that I did, on this 15th day of March, 2017, electronically transmit the above and foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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